IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8853 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

SUKHDEVSINH L JADEJA

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MD RANA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/01/2001

ORAL JUDGEMENT

The present petition has been filed under Article 227 of the Constitution of India by the petitioner-Gujarat State Road Transport Corporation (for short 'the Corporation') challenging the judgment and

award dated 13.3.1989 recorded by the learned Presiding Officer of the Labour Court at Bhavnagar in Ref.(LCB) No.501/87, under which the learned Presiding Judge directed reinstatement of the present respondent in service of the appellant-Corporation on his original position without backwages. It seems that the respondent above named, was working as a reliever watchman in the employment of the petitioner and his services have been terminated without any inquiry and without any notice. Therefore, he applied for reference and the reference was made to the said Labour Court. Before the said Labour Court, the present petitioner had contended that the respondent was not a workman and he was only a badali worker. It was also contended that on 13.8.1985, the present respondent was required to work on duty as watchman. That he occupied the driver's seat of a S.T. motor vehicle and drove the same unauthorisedly, with the result, the vehicle dashed against a wall which was seriously damaged. That some enquiry was made with respect to the said incident and at the end of the enquiry, the petitioner had taken a decision to terminate the services of the respondent. Accordingly, the services were terminated, which came to be challenged in the aforesaid reference. After hearing the parties, the learned Presiding Judge of the Labour Court found that the termination was without enquiry and without any show cause notice and, therefore, there was apparent violation of principles of natural justice. Therefore, the learned Presiding Judge of the Labour Court allowed the said Reference and directed reinstatement of the respondent in the employment of the Corporation as aforesaid.

2. Feeling aggrieved by the judgment and award of the Labour Court, the petitioner has preferred this petition before this court. It has ben mainly contended that the petitioner was merely a badali worker and, therefore, no full-fledged enquiry was undertaken. That therefore, the order of termination could not be challenged before the Labour Court and the Labour Court has seriously erred in directing reinstatement in the employment of the petitioner without backwages. The petitioner has prayed for issue of writ, order or direction for quashing and setting aside the aforesaid order of the Labour Court dated 13.3.1989.

3. Rule was issued at the first instance and Mr M D Rana, learned Advocate has appeared on behalf of the respondent pursuant to the service of rule.

I have heard the learned Advocates for the parties and have perused the papers.

4. Learned Advocate for the petitioner has submitted that the respondent was simply a badali worker and, therefore, no formal enquiry was required to be undertaken and, therefore, the process undertaken by the petitioner cannot be treated to be illegal. However, learned Advocate for the respondent has contended that at least show cause notice should have been issued to the respondent to explain the position. That this has not been done and, therefore, even if the respondent was a badali worker, he was entitled to principles of natural justice which have not been observed in the present case and, therefore, according to the argument of the respondent, the Reference has been rightly answered by the Labour Court and this Court cannot interfere with the said findings of the Labour Court.

5. In support of the said argument, the respondent has relied upon the decision reported in 1993 (1) GLR 442. Here also it has been observed that it is true that badali workers are not employees of the Corporation in view of Regulation 15. Therefore, Discipline & Appeal Rule is not required to be followed in case of badali workers.

6. However, it is further observed in that judgment that the badali workers are not having any right to hold any position or any right like the employees of the Corporation. But at the same time, it cannot be said that they can be stigmatized for their alleged misconduct without following principles of natural justice. This means that the Division Bench of this Court has already propounded a principle that even in case of badali worker, it is necessary for the petitioner Corporation to follow principles of natural justice.

6.1. Another decision of the Apex Court is in the case of S Govindaraju v. K S R T C (AIR 1986 SC 1680) wherein also it has been observed that the termination of badali workers without giving any opportunity of explanation is unjustified.

7. It is, therefore, clear that in the present case, no enquiry was conducted against the respondent, no show cause notice was issued to him in order to enable him to explain the circumstances against him. Whatever enquiry conducted was a fact finding enquiry, which was admittedly an ex-parte enquiry in which the respondent was not a party, which cannot be treated to be a regular enquiry. Therefore, it is apparent that principles of natural justice have been infringed. In that view of the

matter, when a stigma has been attached to the respondent without following due process of law, the court cannot uphold the said action on the part of the petitioner.

8. The decision recorded by the Labour Court in the aforesaid award, therefore, cannot be assailed on any ground. I am, therefore, of the opinion that the Labour Court was perfectly justified in allowing the said Reference and in granting reinstatement of the respondent without backwages. I do not find any reason to differ from the view recorded by the Labour Court. Hence there is no merit in the present petition and the same is required to be dismissed.

This petition is accordingly dismissed. Rule discharged. There shall be no order as to costs.

19.1.2001 [D P Buch, J.]
msp